

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB DEC. 14, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Kartal Besin Maddeleri Pazarlama Ve Ticaret A.S.

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Serial No. 75/293,016

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John S. Egbert of Harrison & Egbert for Kartal Besin Maddeleri  
Pazarlama Ve Ticaret A.S.

Susan Leslie DuBois, Trademark Examining Attorney, Law Office  
101 (Jerry Price, Managing Attorney).

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Before Hairston, Bucher and McLeod, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Kartal Besin Maddeleri Pazarlama Ve Ticaret  
A.S., a corporation of Turkey, has filed an application for  
registration of the mark "VERDE," in the stylized format shown  
below, for "processed olives, olive oil and pickles" in Int.  
Class 29, and for "raw olives" in Int. Class 31.<sup>1</sup>

**VERDE**

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<sup>1</sup> Serial No. 75/293,016, filed May 16, 1997, based on an allegation  
of a *bona fide* intention to use the mark in commerce.

The Trademark Examining Attorney issued a final refusal to register based upon Section 2(d) of the Act, 15 U.S.C. §1052(d), on the ground that applicant's proposed mark, "VERDE," when used on these food items, so resembles the registered mark, "VERDI," as applied to "specialty vinegar" in Int. Class 30, as to be likely to cause confusion, or to cause mistake, or to deceive.<sup>2</sup>

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

The Examining Attorney contends that the goods of applicant and of registrant are clearly related, and applicant seems to have conceded as much. The Trademark Examining Attorney argues that the marks are similar in appearance and sound, as well as in overall commercial impression. Applicant counters that the marks are different in appearance, sound and connotation.

In the course of rendering this decision, we have followed the guidance of *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 567-68 (CCPA 1973), that sets forth the factors which should be considered, if relevant, in determining likelihood of confusion.

There can be little question that the goods of the parties are closely related. In addition to the rather narrowly-drawn

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<sup>2</sup> Registration No. 2,081,173, issued on July 22, 1997. The registration sets forth dates of first use of April 23, 1996.

list of applicant's goods above, the original application, as filed, contained one additional item in the listing of applicant's goods - vinegar - deleted in response to the First Office Action. Similarly, the third-party registrations made of record by the Trademark Examining Attorney show that quite a number of firms have carved out a niche within the food distribution chain that includes various combinations of olives, pickles, olive oil and/or vinegar.

Therefore, we conclude that applicant's goods and those of the registrant will be traveling in the same channels of trade. Furthermore, applicant's and registrant's goods are the type of items that will be, or are, purchased by members of the general public. Because of the nature of the items, such ordinary purchasers are not likely to exercise a great degree of care in their selection.

We turn then to the question of whether the marks involved herein are so similar that use thereof on the identified goods would be likely to generate confusion. In evaluating the similarity of the marks, the Board must examine the overall impression created by the marks, including a comparison of the appearance, sound and meaning of the marks, as well as the manner in which they are displayed. Under the sight, sound and connotation trilogy, we find that there is a likelihood of confusion.

First, the Board notes that each mark consists of a single, five-letter word beginning with the identical four letters, "VERD-" and ending with a vowel. Given the composition of these two words, applicant's mark is much closer in overall appearance to registrant's mark than applicant would have us conclude.

While applicant's mark involves a slightly stylized presentation, we find that such is not sufficient to distinguish the marks. Inasmuch as it is the word portion that is spoken, consumers would remember the word, *per se*, that makes up applicant's mark, rather than the stylization of the letters. Moreover, registrant's registration involves a mark in the form of a typed drawing. Hence, this registration enables registrant to use its mark in a stylized manner, including a stylization not unlike applicant's stylized drawing.

The marks can also be pronounced similarly. Although neither appears to be an English-language word, it is reasonable to conclude that because they share a similar structure - the letters V-E-R-D followed by a vowel - they could well be accorded a similar sound and cadence.

With respect to the meaning of the terms, the applicant has amended the record to confirm that the English language translation of the word "VERDE" is green. Applicant then argues that the cited mark appears to be the name of a famous nineteenth-century, Italian composer. Nonetheless, we find that

many purchasers of these food items would not be familiar with the likely origins of these two words. The average consumer seeing these two largely unfamiliar words on food items would not ascribe a connotation to either mark. Accordingly, the Board concludes that most consumers would regard the marks as arbitrary, and would not distinguish them based upon their connotations.

Although we acknowledge that there are slight differences between the marks, most consumers would neither note nor long remember such differences. Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections.<sup>3</sup>

Accordingly, we find confusion to be likely between the stylized version of the mark, "VERDE," for olives, olive oil and pickles as recited in the instant application and the registered mark, "VERDI," as applied to specialty vinegar.

Decision: The refusal to register is affirmed.

P. T. Hairston

D. E. Bucher

L. K. McLeod

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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<sup>3</sup> Dassler KG v. Roller Derby Skate Corporation, 206 USPQ 255 (TTAB 1980).